IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 1484 of 1995

URBAN IMPROVEMENT TRUST
V/S
RATANLAL & ORS

Mr. DILIP KAWADIA for Mr. RS MANKAD, for the appellant /petitioner

Mr. KR SARAN for Mr. JK BHAIYA, for the respondent

Date of Order : 13.4.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

This writ petition has been filed by the petitioner seeking to challenge the order of the learned Board of Revenue dt. 20.12.1993, and that of the learned Revenue Appellate Authority dt. 2.2.85, being Annexure-3 and 4.

The facts of the case are, that the plaintiff respondent filed a suit for declaration and correction of entries in the Court of Assistant Collector, Udaipur, alleging interalia, that land bearing Araji No. 1198/9 and 867/12 are situated in Village Panerion Ki Madri. It is alleged that the entire village Panerion Ki Madri was a Muafi of the villagers, and the plaintiff also claimed to be a Muafidar, which Muafi was resumed in 1958. It is then alleged that the land bearing no. 1198/9 was in plaintiff's

Khudkasht, and in old possession, and continued to be in possession, and since before resumption, till date, and the land is adjacent to his other khatedari lands. While it was pleaded, that on the land bearing no. 867/12 there is a enclosure, which land was also pleaded to be in possession since before resumption, and the land is being used for storing fodder, and tethering cattle. In para-3 it is also pleaded, that all these lands were in his possession as Muafi lands before resumption, and after resumption it is in the possession of plaintiffs as Khatedar cultivator. It was also alleged that in Section 91 Land Revenue Act proceedings the plaintiff's possession was found to be old one, then the case of the plaintiff is, that the land is recorded as Bila Naam, while after Muafi resumption the land was required to be recorded as Khatedar cultivator, in the name of the plaintiff. The suit was filed in view of threatening of being dispossessed. With these averments the plaintiff claimed a declaration about the two lands being of his khatedari, and also prayed for injunction against his dispossession.

The defendant's contested the suit, inasmuch the State Government took the stand, that the plaintiff if at all claimed to be Muafidar, he should have got the land declared as his personal property under Section 23, and denied the old possession. Then, the U.I.T. pleaded that the plaintiff was not in old possession, and that in

Section 91 proceedings the plaintiff's possession was not found to be since prior to 1958, and the suit was prayed to be dismissed.

The learned trial court found that the plaintiff claims under a Patta Ex.-2, which has not been proved, and the plaintiff has not proved from record, his being in old possession, the land being of his Khudkasht etc., and has not stated anything in this regard in his own statement also. Then, he has not proved from record that since before resumption the plaintiff was in possession as Muafidar, or that the land was his Khudkasht, and has not produced any record, about being in possession after resumption. Likewise it was also noticed, that in proceedings under Section 91, Nayab Tehsildar passed the order of dispossession, against which the appeal was dismissed, which order was set aside in second appeal by the Revenue Appellate Authority, and the matter was remanded, on the ground of plaintiff's claiming to be Muafidar, and being in 12 years old possession, but the plaintiff has failed to prove any record or evidence about it. Then, regarding Patta Ex.2 relating to land bearing Araji no. 1198, being dt. 7.12.57, it was found, to have been not proved, thus the suit was dismissed.

In appeal, learned Revenue Appellate Authority found, that from Ex. 1 it is clear, that village Panerion

Ki Madri is a Muafi village of Brahmins, and Brahmins were themselves cultivating, and in Ex.2 dt. 7.12.1957, it is mentioned that the land was given to the plaintiff, then in 91 proceedings the Tehsildar found the plaintiff's old possession, and the plaintiff as P.W.1 has also deposed the land to be Muafi, and his ancestors to be Muafidars, and his statement is corroborated by the statement of P.W.2. P.W.3 has proved his signatures on Patta Ex.2 A to B. Then, the learned Revenue Appellate Authority also relied upon the notice issued by Nayab Tehsildar on 24.8.1985 and notice of U.I.T. 29.1.1969, to find the plaintiff to be in possession, and after referring to other documents also, it was found, that entire village Panerion Ki Madri is a Muafi village, and the plaintiff is also a Muafidar, and is continuing in possession since before resumption as Muafidar, Muafi was resumed on 1.7.1958, and the plaintiff continued to cultivate as Khudkasht. With these findings the judgment of the learned trial court was set aside, and the plaintiff's suit was decreed, and direction was given to effect necessary mutation in the revenue record.

Against this, a second appeal was filed by the present petitioner. Learned Revenue Board found, that execution of Patta by some Muafidar does not convey any title, even though registration may not have been required, and that it could not confer title, because it has not been executed by all the Muafidars. Even otherwise the plaintiff

could either claim to be a Muafidars or a pattadars, status of both the persons is different, and one will not be a Jagirdar as well as pattadar, one does not give a patta to oneself. It was also found, that no entry from revenue record was shown to prove that at the time of resumption of jagir this land was entered as Khudkast land of the plaintiff, and for granting the khatedari rights to a jamidar it must be shown, that the land was recorded as khudkast land at the time of resumption of jagir, and if it was not so recorded then it should have been in personal cultivation of the jagirdar, then it was necessary to get it declared as khudkast from the Jagir commissioner, which is not shown to have been obtained. Thus, it was found that the plaintiff could not get khatedari rights on the allegations that the land was khudkast land. Then, the learned Revenue Board went to the question about the plaintiff having acquired title by adverse possession, and considered, that according to the plaintiff he is in possession since 1948, and was in possession even in 1953, and that P.W.1 has also stated about plaintiff's possession over the land as a trespasser. Then, it was considered that in the judgment of Tehsildar in proceedings under Section 91, the plaintiff had been noticed to be in possession for the last about more than 12 years. Therefore, it was found that on the date of the suit in 1983, the plaintiff had been in possession for over 30 years, and this possession was hostile, because the State has taken proceedings under

Section 91, which shows that the State was aware that the possession of the plaintiff was hostile. Then, negativing the plea of requirement of pleading the case about adverse possession, it was found, that it is not necessary to plead law, rather only the facts are to be pleaded, and if these facts constitute certain principle of law, then a proper law can be applied to the case, on the basis of those facts. With this proposition it was considered, that plaintiff has pleaded, that he is in possession for quite a long time, and that proceedings under Section 91 were taken against him. This shows, that the plaintiff has pleaded, that he had been in possession of the land as trespasser for a period extending beyond resumption, and thus it was considered to be a plea of adverse possession. Then, it was found, that the right to file a suit for declaration by the State extinguishes after 30 years of the accrual of cause of action, and that the cause of action accrued on the date of resumption, as thereby the status of the plaintiff changed to that of a trespasser, and that the suit was filed after more than 30 years from that date, and the plaintiff, therefore, perfected the title by adverse possession. Thus, the decree of the Revenue Appellate Authority was maintained.

I have heard learned counsel for the parties, and have perused the documents available on record.

It was contended by the learned counsel for the petitioner, that apart from the fact, that the case of adverse possession was required to be pleaded, as it is a question of fact, in any case, admittedly, as pleaded in para-2 of the plaint, the Jagir was resumed in the year 1958, and as found by the learned Board of Revenue the cause of action accrued on the date of resumption, as the status of the plaintiff changed to that of a trespasser from that date. In that view of the matter, since the suit had been filed, not in the year 1983, but on 28.8.1978, it cannot be said, that the plaintiff has been in possession over 30 years, within the meaning of Article 112 of the Limitation Act, and therefore, even on the principles propounded by the learned Board of Revenue, the finding is not sustainable.

Learned counsel for the respondent on the other hand, submitted that the plaintiff is in possession, and has proved to be in possession since much before resumption, and since then, period of more than 30 years had passed, the learned Board of Revenue has rightly declared the plaintiff to have perfected his title by adverse possession. Learned counsel referred to the two judgments of Hon'ble the Supreme Court, in Nathoo Lal Vs. Durga Prasad, reported in AIR 1954 SC-355, and Om Prakash Vs. Ram Kumar, reported in (1991) 1 SCC-441. When, it was pointed out to the learned counsel for the respondent, that

since the suit was filed in the year 1978, even if it were to be assumed, as wrongly observed by the learned Revenue Board, that resumption took place in the year 1952, still 30 years had not been completed, as on the date of filing of the suit, and as such the plaintiff could not get the decree, to which learned counsel for the respondent submitted, that even if that be so, 30 years period was completed during pendency of the suit, and also appeals and appeals which is continuation of the suit, and therefore, the judgment of the learned Board of Revenue does not require any interference.

I have considered the submissions, and have gone through the judgments, and record available.

It is a different story, that Hon'ble the Supreme Court, in Mahavir Vs. The Rural Institute, reported in JT 1997(10) SC-580, has held "no question of adverse possession arises unless it is pleaded and proved that after the possession was taken and handed over to the 3rd respondent, the petitions have asserted their own right to the knowledge of the 3rd respondent and it had acquiesced in it and remained in uninterrupted possession and enjoyment, nec vi, nec lam and nec pre cario". Then, in State of Rajasthan Vs. Harphool Singh, reported in JT 2000(5) SC-546, again it was held, that in order to substantiate such a claim of adverse possession, the ingredients of open,

hostile and continuous possession, with the required animus, should be proved for a continuous period of 30 years, and that some concrete details of nature of occupation, with proper proof thereof, would be absolutely necessary, and mere vague assertions cannot by themselves be a substitute for such concrete proof, required of open and hostile possession. Then, in view of the provisions of Section 112 of the Limitation Act, the plaintiff perfects his title by adverse possession, only on expiry of 30 years.

In this background, a comprehension of facts of the present case does show that, even according to the plaintiff, he claims to be a Muafidar, and alleges the Muafi to have been resumed in 1958. Obviously if he was a Muafidar, then he was in possession in his own right, and there was no question of any adversity, attracted qua anybody, and since Muafi was resumed in 1958, the starting point of adverse animus of possession, shall be the date of resumption of Jagir. Admittedly the suit has been filed in the year 1978, by which time the 30 yeas period had not been completed, therefore, it cannot be said, that the plaintiff had perfected his title by adverse possession. This aspect has been considered by me, notwithstanding the fact, that there is no pleading about adverse possession in the suit, and there is no evidence or averment about any hostile animus. In that view of the matter, the learned Board of Revenue was not justified in finding the plaintiff

to have perfected his title by adverse possession.

So far the contention of the learned counsel for the respondent about his having perfected title during pendency of the litigation is concerned, when the matter was argued on day to day, the learned counsel for the respondent was pointedly asked to show any judgment of any of the High Court or of Hon'ble the Supreme Court, to substantiate the submission, but none was cited. I also do not find any legal authority, to support this proposition. Obviously the rights of the parties are to be adjudicated as on the date of the suit.

So far the judgment cited by the learned counsel for the respondent are concerned, in my view, both the judgments are of no relevance, as in Nathoo Lal's case the principle propounded was in favour of presumption of continuity of possession, which is not a matter in dispute here. While in Om Prakash's case the question was about taking note of subsequent events in a suit for eviction, which again is not a matter here.

Thus taken from any stand point, I do not find the impugned orders Annexure-3 and 4 to be sustainable.

Consequently, the writ petition is allowed. The judgments Annexure-3 and Annexure-4 are set aside, and the

plaintiff's suit is dismissed. The parties shall bear their own costs.

(N P GUPTA),J.

/Sushil/